

**REMARKS**

**Claim Rejections**

Claims 1, 2, 5, 6 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Morikawa et al. (U.S. 5,267,105). Claims 3, 4, 7 and 9-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Morikawa et al. and further in view of Ito (U.S. 3,938,185). Claims 12-15 are objected to as being dependent upon a rejected base claims but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Drawings**

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

**New Claims**

By this Amendment, Applicant has canceled claims 5-7 and 12, amended claims 1, 9, 13 and 14, and has added new claims 16-20 to this application. It is believed that the amended and new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The Examiner has indicated that claims 12-15 would be allowed if rewritten in independent form. Applicant's amended claim 9 comprises a combination of original claims 9 and 12, thus redrafting claim 12 in independent form. Claims 10, 11, and 13-15 depend from independent claim 9. Since no prior art was cited against claim 12, it is believed that claims 9-11 and 13-15 are in condition for allowance.

Claim 1 has been amended to incorporate the subject matter of canceled claims 5-7.

On page 3 of the outstanding Office Action, the Examiner admits that Applicant's admitted prior art:

Does not show a controller coupled to the switch and the driving unit for detecting a rotational speed of the driving unit, the controller comprising: a rotation speed detection module for detecting the rotation speed of the driving unit; a comparative module coupled to the detection module for comparing the rotational speed with a pre-determined speed; wherein the locking means is actuated by the controller to be separated from the cover to make the cover enter the open state when the actuating signal is presented at the switch and the rotation speed is lower than the pre-determined speed.

On page 5 of the outstanding Office Action, the Examiner admits that Applicant's admitted prior art fails "to show a solenoid for control."

The secondary reference to Morikawa et al. discloses a disk loading device including a spindle motor (8), a drive circuit (44), a speed detention circuit (46), a drive circuit (45), and a solenoid (7).

Morikawa et al. does not teach a controller coupled to the switch and the driving unit for detecting a rotational speed of the driving unit; the controller comprising a comparative module coupled to the detection module for comparing the rotational speed with a pre-determined speed; a controller coupled to the switch and the driving unit for receiving the pulse signal; a rotational speed detection module for receiving the pulse signal and detecting the rotational speed of the driving unit; a comparative module coupled to the detecting module for comparing the intervals of the pulse signal with a pre-determined interval; nor does Morikawa et al. teach a signal generation module for generating a speed-reduction signal transmitted to the driving unit for reducing its rotational speed when the intervals of the pulse signal are larger than the pre-determined interval and generating an output signal to make the cover enter the open state.

The secondary reference to Ito discloses a cassette tape data processing terminal unit with a latch including a pair of plungers (24, 25), a locking-up projection (26), first and second detecting switches (28, 29), a spring (23) and a cover (22).

Ito does not teach a controller coupled to the switch and the driving unit for detecting a rotational speed of the driving unit; the controller comprising a rotational speed detection module for detecting the rotational speed of the driving unit; nor does Ito teach the controller comprising a comparative module coupled to the detection module for comparing the rotational speed with a pre-determined speed.

Even if the teachings of Applicant's admitted prior art, Morikawa et al. and Ito were combined, as suggested by the Examiner, the resultant combination does not suggest a controller coupled to the switch and the driving unit for detecting a rotational speed of the driving unit; nor does the combination suggest the controller comprising a comparative module coupled to the detection module for comparing the rotational speed with a pre-determined speed.

Applicant submits that there is not the slightest suggestion in either Applicant's admitted prior art, Morikawa et al., or Ito that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination could not be made under 35 U.S.C. § 103.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring

way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Neither Applicant's admitted prior art, Morikawa et al., nor Ito disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims 1-4 and 8, nor Applicant's new claims 16-20.

**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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